

REMARKS

Claims 16-30 are currently pending in this application. Claims 16, 18-20 and 25-28 have been amended, while claims 1-15 have been cancelled as part of this submission. In the Office Action mailed September 30, 2005 (the “Office Action”), claims 1-30 were rejected based on alleged anticipation and/or obviousness. Applicant respectfully requests reconsideration of the claims as filed in light of the amendments set forth above and the following remarks.

Claim Rejections – 35 USC § 102(b) - Luraschi

Claims 16 and 17 were rejected under 35 USC § 102(b) as being anticipated based on French Patent 2,814,445 to Luraschi (the “Luraschi reference”). Applicant respectfully traverses this rejection as set forth below.

In order for a reference to anticipate the present claimed invention under 35 USC 102(b), it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn as inappropriate.

Claim 16, as amended, recites a method of providing non-preserved potatoes for consumption by a consumer located remotely from a packaging facility, comprising the steps of: (a) packaging at said packaging facility one or more potatoes unaltered by processing within a container of suitable construction to be placed in and withstand a

cooking environment capable of cooking potatoes unaltered by processing; and (b) distributing said container to said consumer located remotely from said packaging facility.

The Luraschi reference fails to disclose each and every element of the invention as set forth in independent claims 1 and 16. More particularly, Luraschi does not disclose the claimed feature of “packaging at said packaging facility one or more potatoes ***unaltered by processing*** within a container of suitable construction to be placed in and withstand a cooking environment capable of cooking potatoes ***unaltered by processing***” as set forth in claim 16. As set forth in the Abstract, the Luraschi reference specifically discloses that “The potatoes are treated chemically by thermo-nebulisation to prevent them from germinating, and after packing are covered by a welded film layer.” Applicant respectfully references the Merriam-Webster online dictionary definition of “fresh” as attached hereto as Exhibit A. More specifically, Applicant respectfully submits that the proper definition of “fresh” within the context of the present application is set forth in 1(b): “not altered by processing ***<fresh vegetables>***” given the fact potatoes are vegetables. The definition set forth in paragraph 6 of the Final Office Action (essentially definition 1(a)(2) in Exhibit A) appears more applicable to a manmade article or foodstuff (“not stale, sour, or decayed ***<fresh bread>***”).

A fundamental aspect of the present invention, as evidenced throughout, is the claimed feature of providing one or more fresh potatoes (i.e. unaltered by processing) within a container of suitable construction to be placed in and withstand a cooking

environment capable of cooking them. As set forth on page 7, lines 10-13, these unaltered potatoes are only washed prior to being packaged. In other words, the potatoes of the present invention are not processed or treated in any manner, such as the thermo-nebulisation as taught in the Luraschi reference. The potatoes of the present invention boast an all natural, truly unaltered condition without the ill-effects and/or negative perceptions about chemical treatments or processing.

Because the Luraschi reference is silent to at least one element of claim 16, it is respectfully requested that the rejection in the Office Action be withdrawn. Claim 16 is believed to be in proper condition for allowance and a determination of such is hereby respectfully requested. Claim 17, being dependent upon and further limiting independent claim 16, should be allowable for the reasons set forth in support of the allowability of claim 16, as well as the additional limitations it contains.

Claim Rejections – 35 USC § 103(a) – Luraschi in view of Fritz

Claims 18 and 19 were rejected under 35 USC § 103(a) as being obvious over the Luraschi reference in view of US Patent No. 5,607,709 to Fritz (the “Fritz reference”). Applicant respectfully traverses this rejection as set forth below.

Claims 18-19 are dependent upon independent claim 16. As noted above, the Luraschi is silent with regard to the claimed feature of “packaging one or more potatoes *unaltered by processing* within a container of suitable construction to be placed in and withstand a cooking environment capable of cooking potatoes unaltered by processing”

as set forth in claim 16. While the Fritz reference does disclose providing cooking instructions on a microwavable container, it does not appear to disclose any teaching, suggestion or motivation about “one or more potatoes unaltered by processing” within such a container.

Given the voids in both the Luraschi and Fritz references, one of ordinary skill in the art would not have consulted the cited references and, even if so, would not have been led to the present invention as set forth in claims 18-19. Applicant respectfully requests a withdrawal of a finding of obviousness with respect to claims 18-19. Applicant further believes claims 18-19 are in proper condition for allowance and respectfully requests an indication of the same.

Claim Rejections – 35 USC § 103(a) – Luraschi in view of Pickard

Claims 20-30 were rejected under 35 USC § 103(a) as being obvious over the Luraschi reference in view of US Patent No. 5,220,909 to Pickard (the “Pickard reference”). Applicant respectfully traverses this rejection as set forth below.

Claims 20-30 are dependent upon independent claim 16. As noted above, the Luraschi is silent with regard to the claimed feature of “packaging one or more potatoes ***unaltered by processing*** within a container of suitable construction to be placed in and withstand a cooking environment capable of cooking potatoes unaltered by processing” as set forth in claim 16. While the Pickard reference does disclosure providing condiments and eating utensils within a microwavable container, it does not appear to

disclose any teaching, suggestion or motivation about “one or more potatoes unaltered by processing” within such a container.

Given the voids in both the Luraschi and Pickard references, one of ordinary skill in the art would not have consulted the cited references and, even if so, would not have been led to the present invention as set forth in claims 20-30. Applicant respectfully requests a withdrawal of a finding of obviousness with respect to claims 20-30. Applicant further believes claims 20-30 are in proper condition for allowance and respectfully requests an indication of the same.

Response to Comments re: Prior Arguments

Applicant wishes to respond to the following comment in Paragraph 6 of the Final Office Action:

“[M]icrowave cooking of fresh whole potatoes in a container is a common practice in an average household having a microwave oven. For instance, the Examiner has been doing this at home for years.”

The present invention is **not** directed at, while in the comfort of your home, simply placing fresh potatoes in a suitable container and cooking them in a microwave oven. As explained in the Background of the Invention, this amounts to an inefficient and time consuming process based on the multiple steps that are required, including removing the fresh potatoes from the traditional plastic bag or cardboard box they are purchased in, washing the potatoes, locating and retrieving a suitable container, placing

the potatoes in the container, optionally securing a lid or cover, and then inserting the container in the microwave.

The present invention, on the other hand, overcomes this inefficiency and time consumption by allowing a consumer to purchase a package that already contains the fresh potatoes and, optionally, any additional items the consumer may want or need in order to microwave and consume the fresh potatoes. In other words, the present invention requires packaging of fresh potatoes at a packaging facility located remotely from the consumer, as opposed to having both the packaging and cooking occurring at the consumer's location (as is the case in the prior art method of microwaving fresh potatoes).

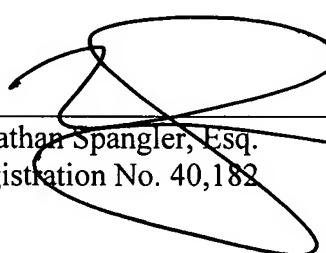
Applicant has amended the claims to make this distinction clear. In particular, the preamble was amended as follows: "A method of providing potatoes unaltered by processing for *consumption by a consumer located remotely from a packaging facility.*" The body of claim 16 has also been amended as follows: "(a) packaging *at said packaging facility* one or more potatoes unaltered by processing within a container..." and "(b) distributing said container to *said consumer located remotely from said packaging facility.*"

CONCLUSION

The foregoing remarks and amendments have been submitted to place the present application in condition for allowance. No new matter has been added. Favorable reconsideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this response or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
NUVASIVE, INC.

By: _____


Jonathan Spangler, Esq.
Registration No. 40,182

2556 Via Torina
Del Mar, CA 92014
Tel.: (858) 243-0029

Date: July 12, 2007